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(e) Refusing to sell to dealers or distributors because of the price at which they are known to be, or suspected of, buying respondent's products from any other person.

Provided, however, That nothing contained in this Order shall be construed to prohibit respondent from petitioning the Commission to reopen and alter, modify, or set aside, in whole or in part, any provision of this Order on the ground that conditions of fact have so changed as to require such action in the public interest.

It is further ordered, That respondent, formerly Sandura Company but recently renamed Del Penn Company, a corporation, shall, within sixty (60) days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Commissioner MacIntyre not concurring.

IN THE MATTER OF

REVCO D.S., INC., ET AL.

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8576. Complaint, June 13, 1963—Decision, June 28, 1965

Order requiring a discount drug store chain with retail stores in Michigan, Ohio, and West Virginia, to cease representing falsely in advertisements in newspapers, by radio and television broadcasts, or any other means, that their drugs, foods, cosmetics and devices have been approved or endorsed by an independent research or testing organization engaged in determining the merits of such merchandise, and that they own, operate, or control manufacturing or laboratory facilities.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Revco, D.S., Inc., a corporation, and Standard Drug Company, a corporation, doing business as Revco Discount Drug Centers, Bernard Shulman, individually and as an officer of each of said corporations, W. B. Doner and Company, a corporation, and Charles F. Rosen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

1. Putting into effect, maintaining, or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with dealers in or distributors of its products which have the purpose or effect of:

(a) Fixing, establishing, or maintaining the prices at which such products may be sold by dealers or distributors; or

(b) Requiring or inducing any dealer or distributor to assist respondent, by means of reports or otherwise, in preventing or restricting any other dealer or distributor from selling respondent's products at any price selected by said other dealer or distributor; or

(c) Requiring or inducing any dealer or distributor to assist respondent, by means of reports or otherwise, in preventing or restricting any other dealer or distributor from buying respondent's products from any person at any available price; or

(d) Requiring or inducing any dealer or distributor to resell to respondent any unsold stock of respondent's products in the event that business relations between respondent and the distributor or dealer are terminated: *Provided*, That respondent shall not be prohibited from repurchasing such unsold stock at the request of a distributor or dealer or from obtaining an option from a distributor or dealer to repurchase such unsold stock in the event that the distributor or dealer is unable to meet his financial obligations to respondent.

2. Entering into, continuing, or enforcing, or attempting to enforce, any contract, agreement, or understanding with any dealer in or distributor of its products for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

3. Engaging, for a period of two years following the date this order shall have become final, either as part of any contracts, agreements, or understandings with any dealers in or distributors of its products, or individually and unilaterally, in the practice of:

(a) Issuing franchises or licenses to dealers or distributors; or

(b) Circulating lists of dealers or distributors of its products to such dealers or distributors; or

(c) Affixing to its products numbers or other identifying marks which designate specific wrapped rolls or other commercially sized items sold as individual units to distributors or dealers; or

(d) Refusing to sell to dealers or distributors because of the price at which they are known to be, or suspected of, selling respondent's products; or

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sale of the merchandise hereinafter mentioned. Respondent Charles F. Rosen is an Officer of this corporate respondent and is the account executive for the respondents referred to in Paragraph One, above. This individual respondent participates in and is primarily responsible for certain acts and practices of this corporate respondent, including those hereinafter set forth. His address is the same as that of the said corporate respondent.

PAR. 5. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 6. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning foods, drugs, cosmetics and devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, having sufficient power to carry such broadcasts across State lines for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said foods, drugs, cosmetics and devices; and have disseminated and caused the dissemination of advertisements concerning the said foods, drugs, cosmetics and devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said foods, drugs, cosmetics and devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

New REVCO Merchandising Policies Provide 30%-70% SAVINGS ON PRESCRIPTIONS.

Compare Revco Formula 1—ingredients and potencies with the other nationally advertised brand of this 1-per-day vitamin. Then check Revco's price—you'll find you save up to 1.77 on the retail list price of the comparable well-known brand.

Buy Miles'
ONE - A - DAY
100's—Retail List 2.94
YOU PAY ONLY 2.00
You Save Up To .94

COMPARE
PRICES

Buy Revco
FORMULA 1
100's—Value 2.94
YOU PAY ONLY 1.17
You Save Up To 1.77

PARAGRAPH 1. Respondent Revco, D.S., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 5555 Concord Avenue, Detroit, Michigan. Respondent Standard Drug Company, doing business as Revco Discount Drug Centers, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 6803 Pearl Road, Cleveland, Ohio. Respondent Bernard Shulman is an officer of each of these corporations. This individual formulates, controls and directs the policies, acts and practices of these corporate respondents, including the acts and practices hereinafter set forth. The address of this individual respondent is the same as that of the corporate respondent Revco, D.S., Inc.

PAR. 2. Through the corporate respondent Revco, D.S., Inc., and fourteen (14) wholly-owned subsidiaries, including the corporate respondent Standard Drug Company, the respondents referred to in Paragraph One hereof own and operate a number of retail drug stores within the States of Michigan, Ohio and West Virginia.

These respondents are now, and for some time last past have been, engaged in the sale and distribution of various articles of merchandise which come within the classification of foods, drugs, cosmetics and devices, as such terms are defined in the Federal Trade Commission Act.

PAR. 3. The respondents referred to in Paragraph One hereof cause their said merchandise, when sold, to be transported from their place of business in the State of Michigan to their several stores located in various other States of the United States for sale to the purchasing public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. Respondent W. B. Doner and Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Washington Boulevard Building, 234 State Street, Detroit, Michigan. This respondent is an advertising agency and is now, and for some time last past has been, the advertising representatives of the respondents referred to in Paragraph One, above. As such, it prepares and places, and has prepared and placed, for publication, advertising material as hereinafter set forth, to promote the

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2. That purchasers of prescriptions will save between 30% and 70% of the usual and customary prices charged by competitors for identical merchandise in the trade area or areas where the said representations are made.

3. That the prices designated "retail list" and "retail" as used in connection with or with reference to merchandise to which respondents compared the prices of their own merchandise, are the prices at which such compared or similar merchandise is usually and customarily sold in the trade area or areas where the representations are made, and that the difference between the higher stated prices for such compared or similar merchandise and respondents' lower advertised prices for their own merchandise is the amount saved by purchasers.

4. That purchasers of respondents' merchandise will save 50% to 70% of the usual and customary prices charged by competitors for compared or similar merchandise in the trade area or areas where the said representations are made.

In truth and in fact, the amounts set out in connection with the words and terms "value," "retail," "retail list," "other" and "chart price" were not the prices at which the merchandise referred to was usually and customarily sold at retail in the trade areas where the representations were made, but were in excess of the prices at which such merchandise was generally sold in such trade areas; purchasers would not realize a savings of the difference between the said higher and lower price amounts; and purchasers would not save between 30% and 70% of the prices at which the merchandise referred to is generally sold in such trade areas.

Moreover, the amounts set out in connection with the words "retail list" and "retail" for merchandise to which respondents compared the prices of their own merchandise were not the prices at which such compared or similar merchandise was usually and customarily sold at retail in the trade areas where the representations were made, but were in excess of the prices at which such compared or similar merchandise was generally sold in such trade areas; purchasers would not realize a savings of the difference between said higher prices and the lower advertised prices for respondents' own merchandise; and purchasers would not save between 50% and 70% of the prices at which compared or similar merchandise is generally sold in such areas.

Therefore, the foregoing representations by respondents were and are false, misleading and deceptive.

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Compare these typical Rx prices * * *

PROOF OF REVCO SAVINGS!

ITEM*	25's		100's	
	Chart Price	REVCO	Chart Price	REVCO
Butazolidin.....	\$3. 80	\$1. 75	\$10. 70	\$6. 58

*Chart price is suggested retail price determined from commonly used pricing chart.

Buy Revco Formula 1				
250's.....			Value.....	6. 47
You Pay Only.....				2. 64
You Save Up to.....				3. 83
Buy Revco Formula 77				
100's.....			Value.....	7. 45
You Pay Only.....				2. 58
			You Save.....	4. 87
Buy Revco Formula 22				
100's.....			Retail.....	5. 08
You Pay Only.....				2. 44
			You Save.....	2. 64
Squibb Theragram-m; 100's size.....			Retail.....	7. 89
Everyday Discount Price.....				5. 45
Butazolidin 100's.....			Other*.....	10. 70
			Revco.....	6. 58
			You Save.....	4. 12

*Other price determined from a commonly used pricing chart.

* * * savings up to 70%.

You'll save up to 70 percent * * *

For instance, if you use 1-milligram Librium Tablets, you may pay as much as \$12.80 per hundred. At Revco you pay only seven eighty-eight. Revco Discount Drug Centers save you 50 to 70 percent.

Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. That the prices designated "value," "retail," "retail list," "other," and "chart price" are the prices at which the merchandise referred to is usually and customarily sold at retail in the trade area or areas where the representations are made, and that the difference between the higher stated prices and respondents' lower advertised prices is the amount saved by purchasers.

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Therefore, the foregoing representations were, and are false, misleading and deceptive.

PAR. 11. A substantial portion of the purchasing public prefers to deal directly with manufacturers in the belief that certain advantages accrue therefrom, including, but not limited to, lower prices, a fact of which the Commission takes official notice.

PAR. 12. In the course and conduct of their businesses, respondents have made certain statements and representations, by means of advertisements disseminated as aforesaid, respecting the number of testimonials which have been received from customers. Included among such statements and representations is the following:

People to People Proof:

(Photographs and Testimonials from 23 persons)—Plus 575,000 more in the first four weeks.

Through the use of the aforesaid statements and representations, respondents have represented, directly and by implication, that they have received in excess of 575,000 testimonials.

In truth and in fact, respondents have received substantially less than 575,000 testimonials.

Therefore, the foregoing representations were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of their businesses, respondents have represented, by means of advertisements disseminated as aforesaid, that an independent research organization had purchased "drugs" from Revco stores and had also purchased identical "drugs" from competitors in the trade areas where the representations were made. Respondents have further represented in said advertising that on the basis of such shopping and comparison, the drugs sold by the respondents referred to in Paragraph One hereof had been certified by the said research organization as being priced below the prices generally charged by competitors for identical drugs.

In truth and in fact, the said research organization did not make purchases or comparisons as represented.

The certification published by respondents in said advertisements differs substantially and materially from the certification issued by the said research organization.

Therefore, the foregoing representations by respondents were, and are false, misleading and deceptive.

PAR. 14. Respondents' aforesaid advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

